

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

LPA No.174 of 2010 (O&M)
Date of decision:21.04.2015

Chander Pal

.....Appellant

versus

Central Soil Salinity Research
Institute, Karnal and another

.... Respondents

(2)

LPA No.993 of 2010 (O&M)

Rajinder Singh

.....Appellant

versus

Central Soil Salinity Research
Institute, Karnal and another

.... Respondents

(3)

LPA No.1019 of 2010 (O&M)

Megh Raj

.....Appellant

versus

Central Soil Salinity Research
Institute, Karnal and another

.... Respondents

(4)

LPA No.176 of 2010 (O&M)

Udaibir

.....Appellant

versus

Central Soil Salinity Research
Institute, Karnal and another

.... Respondents

(5)

LPA No.175 of 2010 (O&M)

Ram Avtar

.....Appellant

versus

Central Soil Salinity Research
Institute, Karnal and another

.... Respondents

(6)

LPA No.1017 of 2010 (O&M)

Resham Singh

.....Appellant

versus

Central Soil Salinity Research
Institute, Karnal and another

.... Respondents

(7)

LPA No.994 of 2010 (O&M)

Jasmer Singh

.....Appellant

versus

Central Soil Salinity Research
Institute, Karnal and another

.... Respondents

(8)

LPA No.1018 of 2010 (O&M)

Raj Kumar

.....Appellant

versus

Central Soil Salinity Research
Institute, Karnal and another

.... Respondents

CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present:- Mr. Vivek Suri, Advocate for the appellant in
LPA Nos.174, 175 and 176 of 2010.

Mr. Ashwani Bakshi, Advocate for the appellant in
LPA Nos.993, 994, 1017, 1018 and 1019 of 2010.

Mr. Aman Chaudhary, Advocate for respondent No.1.

S.S. SARON, J.

For the grounds mentioned in the civil miscellaneous applications in the respective LPAs seeking condonation of delay in filing the appeal and/or refiling the appeal is condoned subject to just exceptions.

This order will dispose of LPAs No.174, 175 and 176 of 2010 as also LPA No.993, 994, 1017, 1018 and 1019 of 2010 as these arise out of the same judgment and order dated 26.08.2009 passed by the learned Single Judge in CWP Nos.4861, 5773, 5774, 5775, 5784, 5786, 5787, 5967, 5909 and 7589 of 2009. The said writ petitions were disposed of by a common order in CWP No.4861 of 2009 titled Central Soil Research Institute, Karnal through its Director versus Megh Raj and another. The appellants in all the aforesaid Letters Patent appeals are workmen and had worked for various periods as daily wagers with the respondent Central Soil Salinity Research Institute, Karnal ('Institute'-for short).

The Central Government, referred nine industrial disputes of various workmen of the respondent-Institute for adjudication. The disputes that were referred to in eight cases except that of Ram Avtar (LPA No.175 of 2010) were as follows:-

“Whether the action of the management of
Central Soil Salinity Research Institute, Karnal in
terminating the services of the workmen, casual

workers w.e.f. 01.04.1988 is legal and justified? If not, to what relief the workman concerned are entitled?"

In the case of Ram Avtar (LPA No.175 of 2010), the reference was in the following terms:-

"Whether the action of the management of Central Soil Salinity Research Institute, Karnal in terminating the services of Sh. Ram Avtar Ex-daily paid labourer w.e.f. 31.12.1987 is just, fair and legal? If not, what relief he is entitled and from what date?"

The admitted position was that the workmen had joined the respondent-Institute on different dates and in various areas on daily wage. They worked continuously till 31.12.1992. They were refused further employment from 01.01.1991 onwards.

According to the workmen, the said refusal was without any reason, notice or retrenchment compensation. All the workmen had completed 240 days of working in the preceding year before their termination by the respondent-Institute. A challenge was also made by the workmen being engaged through the contractor from 01.04.1988 to 31.12.1990. According to the workmen upto December, 1990, they had directly worked with the respondent-Institute. There was no contractor between them and the respondent-Institute. The contract, if any, claimed by the respondent-Institute was an illegal action. The workmen requested for their reinstatement in service with full back wages along with continuity of service.

The respondent-Institute raised objections to the stand of the workmen. It was, however, accepted that the workmen were employed on different dates but they had not worked with the respondent-Institute after 01.04.1988 i.e. the date from which the work was ordered to be taken through different contractors on contract basis. None of the workmen according to the respondent-Institute had completed 240 days of service in the preceding year from 01.04.1988.

Evidence was led by the parties and the documents were tendered in evidence.

The learned Industrial Tribunal cum Labour Court, Chandigarh ('Tribunal'-for short) adjudicated upon the following issues:-

- “1. Whether the respondent is an industry? and whether this Tribunal has jurisdiction to dispose of these references?
2. Whether the workmen worked with the management directly upto December, 1990 or upto 01.04.1988?
3. Whether the contract as claimed by the workmen from 01.04.1988 till December, 1990 is sham, illegal and against the provisions of law?
4. Whether the workmen are entitled to the relief prayed for?”

After considering the above issues on the basis of evidence and material on record, the learned Tribunal vide its award dated

24.12.2008 held that admittedly no notice of retrenchment was

given to the workmen before their terminations. It was held that there was no material on record to accept the contention of the learned counsel for the respondent-Institute that the initial appointment of the workmen was not legal. It was held that all the workmen were entitled for the relief as had been prayed for. It was also held that the action of the respondent-Institute in terminating the services of all the workmen was not legal or justified. All the workmen were accordingly held entitled to reinstatement in services on the same terms and conditions they were working with the respondent-Institute at the time of termination of their services. However, they were not held entitled for any back wages. The respondent-Institute was directed to reinstate all the workmen in services within one month from the date of publication of the award.

The respondent-Institute aggrieved against the award dated 24.12.2008 passed by the learned Industrial Tribunal cum Labour Court, Chandigarh filed writ petitions in this Court.

A learned Single Judge of this Court vide order dated 26.08.2009 noticed that all the workmen had definite case to contend where each of them had given specific date, month and year or at least year from when each one had been engaged from. The Labour Court, it was observed, found that the workmen had 240 days of continuous service and recorded a finding that the plea of contract of their engagement was a sham and consequently their termination was illegal and they were directed to be reinstated with continuity in service.

Learned counsel for the workmen had contended before the learned Single Judge that there had been regular posts created for the work, which the workmen were doing and there had also been an advertisement for those posts. Many of the workmen in fact had competed for the post but were not selected.

The learned Single Judge noticed that the point of reference was only for finding whether the termination was bad or not. The issue was not whether the appointment process after advertisement had been properly done or not. It was held that if there were regular posts and there are rules for filling up regular posts, by the only fact that the workmen had worked for several months would not get a right to seek regularization or to demand that they be absorbed. A reference was made to the case of **Secretary, State of Karnataka v. Umadevi and others**, (2006) 4 SCC 1, wherein it has inter alia been held that mere length of service shall not be a ground for regularization and appointment in public office could not be done in violation of Article 14 and 16 of the Constitution. It was held that all the workmen had admittedly completed 240 days of continuous service prior to their respective dates of terminations from service on 31.12.1990 and they had been found to be directly employed. Their termination being without compliance of Section 25-F of the Industrial Disputes Act, 1947 ('Act'-for short) was bad in law. The finding of the learned Tribunal on this aspect was affirmed. On the issue of reinstatement, however, it was held that reinstatement is not to be ordered merely because it is lawful to do so. The question, it was noticed, would always be whether in the particular situations emanating from the

respective cases the workmen would require to be reinstated. It was held that although there had been non-compliance of Section 25-F of the Act, the workmen shall not be entitled to reinstatement.

The fact that the workmen had completed 240 days of service and they had been in regular employment from between the years 1972 in some cases and in many other cases from the years from 1982, it was noticed, was not seriously disputed. Learned counsel appearing for the workmen had pointed out as to how in each case specific number of days or specific years that the workmen had worked had been clearly given in the respective claim statements. These had gone un-refuted or a denial had come about which was merely vague and could not be taken as a specific denial. It was noticed that in CWP No.4861 of 2009, the workman Megh Raj had contended that he had been employed from the year 1982 onwards and there was no denial to the same. In CWP No.5773 of 2009, the averment in the claim petition was that the workman Ram Narain had been working from 01.01.1972 but sets out details of engagement from the year 1979 for each year upto 1990. In CWP No.5774 of 2009, the case of Ram Avtar workman was that he had been working from 1982 to which there was no denial. In CWP No.5775 of 2009, the workman Resham Singh is said to have worked from 1981 onwards with details coming from 1986. There was no reply or denial to the same. In CWP No.5784 of 2009, the workman Udaibir had stated that he had been working from 1988 and in CWP No.5786 of 2009, the workman Jasmer Singh had contended that he had been working since 1984. In both these cases the reply was one of denial of relationship as Master and

servant but the particular years from when the workmen had been contending that they were working had not been denied. In CWP No.5787 of 2009, the workman Raj Kumar had contended that he was working from 1981 and in CWP No.5909 of 2009, the workman Rajender Singh stated that he had worked from 1984 in one place but in yet another place had also given the details that he had also stated elsewhere that he had been working from 1979. In CWP No.5967 of 2009, the contention of the workman Chander Pal was that he had been working from 1988 onwards and in CWP No.7589 of 2009, the contention of workman Ishwar Singh that he had been working from 1986. It may be noticed that the workmen Ram Narain (respondent No.1 in CWP No.5773 of 2009) and Ishwar Singh (respondent No.1 in CWP No.7589 of 2009) have not filed appeals against the order of the learned Single Judge.

In all these petitions, it was noticed that one homogenous feature was that each of the workmen had admittedly completed 240 days of continuous service at the time when their respective services were terminated. The workmen had set out details of engagement of each year and invariably the periods of engagements were for 150 days upwards for each one of those years. In some cases, these were as early as from 1972 or early years of 1980. However, all these workmen were kept on tenterhooks as mere casual labourers or daily workers. It was, however, held that the appropriate relief in the circumstances would be only compensation. The workmen had worked during various years and it was considered inappropriate to give them the same amount of compensation irrespective of the years of service. The

details of employment from which each of the workmen had worked was considered and varying amounts of compensation were awarded to the workmen by the learned Single Judge vide its order dated 26.08.2009.

Aggrieved against the said order dated 26.08.2009, the respondent-Institute filed Letters Patent Appeals in this Court primarily contending that the respondent-Institute was not an 'Industry' and the Industrial Tribunal cum Labour Court had no jurisdiction to dispose of the references. The LPAs of the respondent-Institute were dismissed by this Court on 15.12.2009.

Special Leave to Appeal (Civil) Petitions (CC) 8902/2010 were filed in the Supreme Court of India against the order passed in the said LPAs. The Supreme Court issued notice on 08.07.2010 confined to the question as to whether the respondent-Institute was an 'Industry' within the meaning of the Act.

The special leave petitions filed by the respondent-Institute have since been dismissed by the Supreme Court on 10.10.2014 with the following order:-

"Having heard learned counsel for the parties, we find no merit in the special leave petition. They are accordingly, dismissed.

Petitioner is directed to pay the amount to the respondent as determined by High Court with 6% interest from the date of judgment of Single Judge within two months."

After the dismissal of the special leave to appeal petitions, the present Letters Patent Appeals filed by the workmen, which had

been adjourned sine die on 07.02.2011 to await the decision of the Supreme Court, have been taken up.

During the course of hearing, it was brought out that some of the workmen namely Megh Raj, Resham Singh, Raj Kumar and Jasmer Singh have been paid the compensation awarded by the learned Single Judge along with interest at the rate of 6 per cent per annum as awarded by the Hon'ble Supreme Court.

Mr. Ashwani Bakshi, Advocate appearing for the workmen Megh Raj, Resham Singh, Raj Kumar and Jasmer Singh submits that he does not claim reinstatement in service of the said workmen but he claims higher compensation for them stating that the compensation as awarded is inadequate; besides, he submits that the workman Rajender, however, claims reinstatement in service with all consequential benefits and continuity of service as also back wages. It is submitted that the learned Industrial Tribunal cum Labour Court having granted the relief of reinstatement to the said workman Rajender, the same was not liable to be denied to him by the learned Single Judge. In any case, it is submitted that in the alternative he also claims higher compensation for said Rajender.

Mr. Vivek Suri, Advocate appearing for the workmen Chander Pal, Ram Avtar and Udaibir submits that the said workmen have so far not claimed the compensation as has been awarded by the learned Single Judge with interest at the rate of 6 per cent per annum awarded by the Hon'ble Supreme Court and they also pray for their reinstatement in service with all consequential benefits and in the alternative he claims higher compensation than that awarded by the learned Single Judge for the said workmen.

In response, Mr. Aman Chaudhary, Advocate appearing for the respondent Institute submits that the matter has already been settled by the Hon'ble Supreme Court in terms of its order dated 10.10.2014 inasmuch as the workmen were given further interest of 6 per cent per annum from the date of judgment of the Hon'ble Single Judge in the special leave petitions filed by the respondent Institute. The appellants/workmen, therefore, it is submitted are not entitled for any other relief and further claims of higher compensation and/or reinstatement in service are devoid of any merit.

We have given our thoughtful consideration to the contentions of the learned counsel for the parties.

In order to ascertain the question in respect of each of the workmen, the following chart may be adverted to:-

Name of workmen	CWP Nos.	LPA No. of Institute	LPA No. of workmen	Initial appoint-ment	Termina-tion	Compensta-tion awarded by Id. Single Judge
Megh Raj	4861/2009	1082/2009	1019/2010	1982	31.12.90	Rs.2 lacs
Chander Pal	5967/2009	1023/2009	174/2010	1988	31.12.90	Rs.35,000/-
Resham Singh	5775/2009	1084/2009	1017/2010	1981	31.12.90	Rs.2 lacs
Ram Avtar	5774/2009	1085/2009	175/2010	1982	31.12.90	Rs.2 lacs
Raj Kumar	5787/2009	1087/2009	1018/2010	1981	31.12.90	Rs.2 lacs
Udaibir	5784/2009	1089/2009	176/2010	1988	31.12.90	Rs.35,000/-
Rajender Singh	5909/2009	1090/2009	993/2010	1984/79	31.12.90	Rs.75,000/-
Jasmer Singh	5786/2009	1091/2009	994/2010	1984	31.12.90	Rs.75,000/-

From the above chart, it may be noticed that insofar as the workmen Megh Raj, Resham Singh, Raj Kumar and Jasmer Singh are concerned, the compensation awarded by the learned Single

Judge along with 6 per cent interest as awarded by the Supreme Court have been paid by the respondent-Institute and accepted by them.

The question regarding reinstatement in service as have been urged by Shri Ashwani Bakshi, Advocate on behalf of Rajender Singh and Shri Vivek Suri, Advocate appearing for Chander Pal, Ram Avtar and Udaibir is not res integra. It is now well settled that in case of violation of Section 25 F of the Act, reinstatement in service is not automatic. Recently a Full Bench of this Court in **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur v. Presiding Officer, Labour Court, Gurdaspur and another**, 2015 (1) RSJ 642 after considering the case law, enunciated the following principles:-

“(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the

employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.”

Proposition (iii) as enumerated above, clearly lays down that reinstatement in service on account of violation of the statutory provisions is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se in accordance with the rules and the statutory provisions and the length of service, the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having

completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

In the present case, the learned Single Judge held that all the workmen had been daily rated workmen. The employment was to the posts which were created for regular engagement and recruitment was to be done. The process of recruitment through regular modes is governed by rules that sets out a procedure including advertisement and an interview. Some of the workmen had appeared in interview but were not selected. It was also held that it was a fact that the nature of engagement admits of engagement through contract labour by way of registration for such purposes under the Contract Labour (Regulation and Abolition) Act, 1970. Therefore, although there was non-compliance of Section 25 F of the Act, the workmen were held to be not entitled to reinstatement.

In the circumstances, it is well settled that the violation or infraction of Section 25F of the Act does not per se entail automatic reinstatement in service of the workman. The propositions as laid down by the Full Bench in Municipal Council, Dina Nagar's case (supra) are indeed to be considered. The nature of appointment, period of work put in has been duly considered; besides, the fact that the appointments were against regular posts which require procedure for employment of workmen has been violated. Therefore, there was indeed a violation and an infraction in the engagement of the workmen and consequently no ground is made out for the reinstatement of the workmen Rajender Singh, Chander

Raj, Ram Avtar and Udaibir.

Insofar as the claim for higher compensation is being made, it is to be noticed that the Supreme Court in SLP filed by the respondent-Institute vide order dated 10.10.2014 directed the payments of amounts to the workmen as had been determined by High Court with 6% interest from the date of judgment of the learned Single Judge within two months. It is to be noticed that even though the SLP was filed by the respondent-Institute aggrieved against the order of the Letters Patent Appeal of this Court treating it as an 'Industry', however, necessary further relief has been granted to the workmen who were respondents before the Hon'ble Supreme Court. Even though this may not strictly be taken as a view for not granting to the workmen further or higher compensation but nevertheless would show that the Supreme Court was seized of the matter and had granted 6% interest over and above the compensation granted by the learned Single Judge and that too, as already noticed on the SLP filed by the Institute. Besides, some of the workmen namely Megh Raj, Resham Singh, Raj Kumar and Jasmer Singh have been paid the compensation as determined by the learned Single Judge with 6% interest and the same has been accepted by them without any protest.

The learned Single Judge has awarded compensation to the workmen on a just and proper manner, which is not on any irregular or irrational basis. For each of the workmen, the compensation has been awarded keeping in view the period of work done by them or the service rendered.

It is to be noticed that the learned Single Judge awarded

Rs.2 lacs as compensation to Megh Raj (respondent No.1 in CWP

No.4861 of 2009) who had been working since 1982. A sum of Rs.2,50,000 has been awarded to Ram Narain (respondent No.1 in CWP No.5773 of 2009 – who is not an appellant in the present LPAs). According to Ram Narain he had joined the Management on daily wages in 1972 and had worked till 31.12.1990. The respondent-Institute had taken the stand that he was on contract basis w.e.f. 01.04.1988. A sum of Rs.2 lacs has been awarded to Ram Avtar in CWP No.5774 of 2009. Ram Avtar had been working since 1982. A sum of Rs.2 lacs has been awarded to Resham Singh in CWP No.5775 of 2009, who had been working since 1981. A sum of Rs.35,000/- has been awarded to Udaibir in CWP No.5784 of 2009, who had been working since 1988. A sum of Rs.75,000/- has been awarded to workman Jasmer Singh in CWP No.5786 of 2009, who had contended that he had been working since 1984. A sum of Rs.2 lacs has been awarded to Raj Kumar in CWP No.5787 of 2009. He had been working since 1981. A sum of Rs.75,000/- has been awarded to Rajender Singh in CWP No.5909 of 2009 who had been working from 1984 in one place but yet in another place, he had given the details that he had also worked elsewhere. A sum of Rs.35,000/- has been awarded to Chander Pal in CWP No.5967 of 2009, who it was contended had been working from 1988 onwards and a sum of Rs.50,000/- has been awarded to Ishwar Singh (respondent No.1 in CWP No.7589 of 2009, who is not an appellant in the present LPAs). According to Ishwar Singh-workman, he had joined the service of the respondent-Institute on daily wages in 1984 and had got continuously till 31.12.1990.

Therefore, the compensation as have been awarded is on the basis of certain factors and circumstances duly taken into consideration by the learned Single Judge. Nothing has been shown to hold that the individual compensation awarded to each of the workmen aforementioned is in any manner improper, illegal or perverse which may warrant interference in Letters Patent Appeals. However, keeping in view the fact that the Supreme Court has granted 6% interest to the workmen from the date of judgment of the Single Judge, the workmen would be entitled to the same on the basis of the order of the Supreme Court. Apart from this they are not entitled to any further interest.

Accordingly, LPAs are dismissed.

However, the workmen shall be entitled to 6% interest on the amount awarded by the learned Single Judge from the date of judgment till payment of the amount and the same shall be paid to the workmen, if not already paid, in compliance with the order of the Supreme Court.

(S.S. Saron)
Judge

(Ramendra Jain)
Judge

21.04.2015
A.Kaundal